

## Two New Tax Benefits Aid Employers Who Hire and Retain Unemployed Workers

*Updated June 7, 2010, to clarify language related to the new law.*

*Update June 2, 2010 — [Revenue Procedure 2010-24](#) modifies the inflation adjusted amounts in Revenue Procedure 2009-50 that apply to taxpayers who elect to expense certain property under § 179 to reflect changes enacted as part of the HIRE Act.*

IR-2010-33, March 18, 2010

WASHINGTON — Two new tax benefits are now available to employers hiring workers who were previously unemployed or only working part time. These provisions are part of the Hiring Incentives to Restore Employment (HIRE) Act enacted into law today.

Employers who hire unemployed workers this year (after Feb. 3, 2010 and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from their share of Social Security taxes on wages paid to these workers after March 18, 2010. This reduced tax withholding will have no effect on the employee's future Social Security benefits, and employers would still need to withhold the employee's 6.2-percent share of Social Security taxes, as well as income taxes. The employer and employee's shares of Medicare taxes would also still apply to these wages.

In addition, for each worker retained for at least a year, businesses may claim an additional general business tax credit, up to \$1,000 per worker, when they file their 2011 income tax returns.

"These tax breaks offer a much-needed boost to employers willing to expand their payrolls, and businesses and nonprofits should keep these benefits in mind as they plan for the year ahead," said IRS Commissioner Doug Shulman.

The two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify but only if the workers they are replacing left voluntarily or for cause. Family members and other relatives do not qualify.

In addition, the new law requires that the employer get a statement from each eligible new hire certifying that he or she was unemployed during the 60 days before beginning work or, alternatively, worked no more than 40 hours for anyone during the 60-day period. The IRS is currently developing a form employees can use to make the required statement.

Businesses, agricultural employers, tax-exempt organizations and public colleges and universities all qualify to claim the payroll tax benefit for eligible newly-hired employees. Household employers cannot claim this new tax benefit.

Employers claim the payroll tax benefit on the federal employment tax return they file, usually quarterly, with the IRS. Eligible employers will be able to claim the new tax incentive on their revised employment tax form for the second quarter of 2010. Revised forms and further details on these two new tax provisions will be posted on IRS.gov during the next few weeks.

See [HIRE Act: Questions and Answers for Employers](#)

## **FAQs About the Payroll Tax Exemption and Qualified Employers**

### **(03/29/10) QR1: What is the payroll tax exemption?**

**A-QR1:** The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

### **(03/29/10) QR2: Which employers qualify for the payroll tax exemption?**

**A-QR2:** Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. territories (i.e., American Samoa, Commonwealth of Northern Mariana Islands, Guam, the U.S. Virgin Islands and Puerto Rico) that are subject to federal social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption. Indian tribal governments also qualify for the exemption.

### **(03/29/10) QR3: Does the payroll tax exemption apply to household employers?**

**A-QR3:** No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

### **(03/29/10) QR4: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?**

**A-QR4:** Yes, if they are qualified employees.

### **(03/29/10) QR5: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?**

**A-QR5:** Yes, if the employee is a qualified employee.

### **(05/06/10) QR6: Can a qualified employer both apply the payroll tax exemption and claim the work opportunity tax credit (WOTC) for the same employee?**

**A-QR6:** No, an employer may either apply the payroll tax exemption or claim the WOTC for an employee, but not both. An employer that wishes to claim the WOTC for a qualified employee may not apply the payroll tax exemption with respect to any wages paid to that employee from March 19, 2010, through December 31, 2010.

### **(05/06/10) QR7: If an employer applies the exemption to wages paid to a nonqualified employee, is the employer liable for the amount of employer social security tax on wages previously reported as exempt?**

**A-QR7:** Yes, the employer is liable for the amount of employer social security tax on wages it erroneously reported as exempt, because the exemption is only applicable to wages paid to qualified employees. The employer must file Form 941-X for each prior quarter for which the exemption was erroneously applied.

### **(05/06/10) QR8: How does application of the payroll tax exemption to wages paid to restaurant employees affect the 45B credit?**

**A-QR8:** Certain food and beverage establishments can claim a credit under section 45B of the Internal Revenue Code for social security and Medicare taxes paid or incurred by the employer on certain employee tips, referred to as the "45B credit."

An employer could be eligible for both the payroll tax exemption **and** the 45B credit on certain tips if the employer has tipped employees who are also qualified employees under the HIRE Act. The payroll exemption is taken on the employer's Form 941 and the 45B credit is taken on the employer's income

tax return.

The payroll tax exemption applies to all wages paid to a qualified employee unless the employer elects out of the payroll tax exemption with respect to the employee. An employer that applies the payroll tax exemption with respect to a qualified employee will be entitled to a smaller 45B credit because the employer will pay only Medicare tax (and not social security tax) on the employee's wages, including reported tips.

### **References/Related Topics**

- [Payroll Tax Exemption for Hiring Unemployed Workers](#)
- [HIRE Act: Questions and Answers for Employers](#)

## FAQs About Qualified Employees

**(06/01/10) QE1: Who are qualified employees?**

**A-QE1:** Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, who are not employed by the qualified employer to replace another employee of that employer, unless the other employee separated from employment voluntarily or was terminated for cause, and who are not family members of or related in certain other ways to the employer.

**(03/20/10) QE2: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?**

**A-QE2:** Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

**(03/20/10) QE3: Is the 60-day period continuous, and can it span 2009-2010?**

**A-QE3:** The 60-day period must be continuous and can span 2009-2010.

**(03/20/10) QE4: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?**

**A-QE4:** The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

**(03/20/10) QE5: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?**

**A-QE5:** Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

**(03/20/10) QE6: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?**

**A-QE6:** Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

**(03/20/10) QE7: Does the payroll tax exemption apply only if the employer previously laid employees off?**

**A-QE7:** No, the payroll tax exemption can apply to wages paid to any qualified employee.

**(03/20/10) QE8: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?**

**A-QE8:** Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

**(05/06/10) QE9: Does the qualified employee have to work a set period of time for the employer to be eligible for the exemption?**

**A-QE9:** No. Application of the payroll tax exemption does not require that a qualified employee be employed for a set number of hours or a set number of weeks.

**(05/06/10) QE10: Is there a minimum age for qualified employees? Will high school summer hires and interns be considered eligible employees?**

**A-QE10:** There is no minimum age requirement to be a qualified employee.

**(05/06/10) QE11: Some businesses use the services of workers who are employees of a**

**temporary agency. Can the temporary agency claim the payroll tax exemption for its qualified employee working at a client business?**

**A-QE11:** The temporary agency can apply the exemption with respect to wages paid to a qualified employee of the temporary agency. This is determined based on when the employee begins employment with the temporary agency, and not based on when the employee begins work at a client business of the temporary agency.

**(05/06/10) QE12: If a client business hires an employee who previously provided services to the business as an employee of a temporary agency, is the client business entitled to apply the payroll tax exemption?**

**A-QE12:** The client business can apply the exemption if the worker is a qualified employee when he or she begins employment with the client as its employee. That is, the worker must not have worked as an employee for any business (including the temporary agency) for more than 40 hours in the 60 days prior to beginning employment with the client business.

**(05/06/10) QE13: Can employers create their own affidavit or must they use IRS Form W-11?**

**A-QE13:** Employers can use their own affidavit as long as it includes the same information as IRS Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, and is signed under penalties of perjury.

**(05/06/10) QE14: Must the signed affidavit (e.g., Form W-11) be notarized?**

**A-QE14:** No

**(05/06/10) QE15: Should employers send signed employee affidavits, such as Form W-11, to the IRS?**

**A-QE15:** No, the employer does not file or send signed employee affidavits to the IRS. The employer should retain these affidavits with other payroll and income tax records.

**(05/06/10) QE16: Can an employer apply the payroll tax exemption even if an employee fails to sign an employee affidavit, such as Form W-11?**

**A-QE16:** No. An employer can only apply the exemption on wages paid to a qualified employee. In order to be a qualified employee, among other requirements, the employee must sign an employee affidavit such as Form W-11.

**(05/06/10) QE17: Is there a deadline for the employer to get the signed affidavit from the employee?**

**A-QE17:** Yes, the employer must have the signed affidavit by the time the employer files an employment tax return applying the payroll tax exemption. If the employer obtains the signed affidavit from the qualified employee after wages are paid to the employee, the employer can still apply the payroll tax exemption to determine its liability on these wages. In some cases this may require the filing of a corrected return for a prior quarter.

For example, an employer hires an otherwise qualified employee who begins employment on March 1, 2010 and is paid wages in March. The qualified employee does not provide the signed affidavit until April 15, 2010. The employer can claim the first quarter credit on the second quarter Form 941 for the amount of the exemption with respect to wages paid to the qualified employee from March 19, 2010 through March 31, 2010 and can apply the exemption to wages paid to the qualified employee starting April 1, 2010, despite the fact that the employee did not provide the signed affidavit until April 15, 2010.

In contrast, if the otherwise qualified employee does not provide the signed affidavit until August 1, 2010, the employer may not claim the first quarter credit on the second quarter Form 941 for wages paid to the qualified employee from March 19, 2010, through March 31, 2010, and cannot apply the exemption to wages paid in the second quarter because the employer did not obtain the signed affidavit by the time it filed its second quarter Form 941. Instead, the employer must file a Form 941-X to correct the second quarter of 2010 if it wants to claim the first quarter credit and apply the exemption to the second quarter wages paid to the qualified employee.

**(05/06/10) QE18: May Form W-11 (or a similar form containing the same information as the Form W-11) be transmitted electronically and signed by way of electronic signature?**

**A-QE18:** Yes, employers may obtain signed Forms W-11 (or similar forms containing the same information) electronically. The electronic system generating the form must transmit the same information as the Form W-11, must ensure that the information transmitted and received is the information sent, and must document all occasions of user access that result in the transmission.

The electronic transmission must be signed by way of an electronic signature by the employee whose name is on the Form W-11 and the signature must be made under penalties of perjury. The perjury statement must contain the language that appears on the paper Form W-11. The electronic system must inform the employee whose name is on the Form W-11 that the employee must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W-11. The instructions and the language of the perjury statement must immediately follow the employee's statements and immediately precede the employee's electronic signature. The electronic signature must be the final entry in the employee's Form W-11 submission.

The act of the electronic signature must be made by the employee whose name is on the electronic Form W-11, and the signature must also authenticate and verify the submission, by making reasonably certain that the person accessing the system and submitting the form is the employee identified on the Form W-11.

Upon request by the Internal Revenue Service during an examination, the employer must supply a hard copy of the electronic Form W-11, and a statement that, to the best of the employer's knowledge, the electronic Form W-11 was made by the employee whose name is on the form. The hard copy of the electronic Form W-11 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-11.

#### **References/Related Topics**

- [Payroll Tax Exemption for Hiring Unemployed Workers](#)
- [HIRE Act: Questions and Answers for Employers](#)

## Form to Claim Payroll Tax Exemption for Hiring New Workers Now Available

IR-2010-64, May 18, 2010

WASHINGTON — The Internal Revenue Service has issued the newly revised payroll tax form that most eligible employers can use to claim the special payroll tax exemption that applies to many new workers hired during 2010.

Designed to encourage employers to hire and retain new workers, the payroll tax exemption and the related new hire retention credit were created by the Hiring Incentives to Restore Employment (HIRE) Act signed by President Obama on March 18.

Employers who hire unemployed workers this year (after Feb. 3, 2010, and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from the employer's share of Social Security tax on wages paid to these workers after March 18. This reduction will have no effect on the employee's future Social Security benefits. The employee's 6.2 percent share of Social Security tax and the employer and employee's shares of Medicare tax still apply to all wages.

In addition, for each qualified employee retained for at least a year whose wages did not significantly decrease in the second half of the year, businesses may claim a new hire retention credit of up to \$1,000 per worker on their income tax return. Further details on both the tax credit and the payroll tax exemption can be found in a recently-expanded list of answers to [frequently-asked questions](#) about the new law now.

### How to Claim the Payroll Tax Exemption

[Form 941](#), Employer's QUARTERLY Federal Tax Return, revised for use beginning with the second calendar quarter of 2010, will be filed by most employers claiming the payroll tax exemption for wages paid to qualified employees. The HIRE Act does not allow employers to claim the exemption for wages paid in the first quarter but provides for a credit in the second quarter. The [instructions](#) for the new Form 941 explain how this credit for wages paid from March 19 through March 31 can be claimed on the second quarter return.

The HIRE Act requires that employers get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she was not employed for more than 40 hours during the 60 days before beginning employment with that employer. Employers can use new [Form W-11](#), Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, released last month, to meet this requirement. Though employers need this certification to claim both the payroll tax exemption and the new hire retention credit, they do not file these statements with the IRS. Instead, they must retain them along with other payroll and income tax records.

These two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify as long as they are replacing workers who left voluntarily or who were terminated for cause and otherwise are qualified employees. Family members and other relatives do not qualify for either of these tax benefits.

Businesses, agricultural employers, tax-exempt organizations, tribal governments and public colleges and universities all qualify to claim the payroll tax exemption for eligible newly-hired employees. Household employers and federal, state and local government employers, other than public colleges and universities, are not eligible.